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9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA  
11 SAN FRANCISCO DIVISION  
12

13 UNITED STATES OF AMERICA, ) No. CR 03-0279 FMS  
14 Plaintiff, )  
15 v. ) PLEA AGREEMENT  
16 ROBERT E. VENER, )  
17 Defendant. )  
18 )  
19 )

20 I, Robert E. Vener, and the United States Attorney's Office for the Northern District of  
21 California (hereafter "the government") enter into this written plea agreement (the "Agreement")  
22 pursuant to Rules 11(c)(1)(A) and 11(c)(1)(B) of the Federal Rules of Criminal Procedure:

23 The Defendant's Promises

24 1. I agree to plead guilty to the captioned superseding information charging me with  
25 one count of mail fraud in violation of 18 U.S.C. § 1341, and one count of engaging in monetary  
26 transaction in violation of 18 U.S.C. § 1957. I agree that the elements of the offense of mail  
27 fraud, and the maximum penalties are as follows: (1) I made up a scheme or plan for obtaining  
28 money or property by making false statements or promises; (2) I knew that the promises or

PLEA AGREEMENT  
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1 statements were false at the time they were made; (3) The promises or statements were material;  
2 (4) I acted with the intent to defraud; (5) I used, or caused to be used, the mails to carry out or  
3 attempt to carry out an essential part of the scheme.

- |    |    |                                 |  |
|----|----|---------------------------------|--|
| 4  | a. | Maximum prison sentence         | Five years   |
| 5  | b. | Maximum fine                    | \$250,000, or twice the<br>6 amount of the gross gain or<br>7 gross loss, whichever is<br>8 greatest |
| 9  | c. | Maximum supervised release term | Three years  |
| 10 | d. | Mandatory special assessment    | \$100  |
| 11 | e. | Restitution                     | As determined by the court   |

12 I agree that the elements of the offense of engaging in monetary transaction in violation of 18  
13 U.S.C. § 1957, and the maximum penalties are as follows: (1) I withdrew funds from a federally  
14 insured financial institution; (2) the withdrawal was greater than \$10,000 and was money derived  
15 from mail fraud; (3) I knew that this withdrawal involved proceeds of mail fraud; and (4) the  
16 financial institution was engaged in interstate or foreign commerce.

- |    |    |                                 |  |
|----|----|---------------------------------|--|
| 17 | a. | Maximum prison sentence         | Ten years  |
| 18 | b. | Maximum fine                    | \$250,000 or twice the amount<br>19 of the criminally derived<br>20 property involved in the<br>21 transaction, whichever is<br>22 greater |
| 23 | c. | Maximum supervised release term | Three years  |
| 24 | d. | Mandatory special assessment    | \$ 100   |
| 25 | e. | Restitution                     | As determined by the court   |

26 2. I agree that I am guilty of the offense to which I will plead guilty, and I agree that the  
27 following facts are true:

28 I made up a scheme or plan for obtaining money or property by making false statements or  
promises. Specifically, from on or about June 23, 1998 through June 23, 2000, I made and  
caused to be made oral and written false representations to wholesalers, broker/dealers and

1 prospective investors regarding the DFS Trust investments to persuade investors to invest in the  
2 trusts. The false representations included that the DFS Trusts would purchase receivables having  
3 a net collectible value from healthcare providers which would be less than either 90 or 180 days  
4 from the billing date. I knew that these representations were false at the time they were made. I  
5 agree that I acted with the intent to defraud and that the representations were material at the time  
6 they were made. As a result of these representations, on or about March 30, 2000, I caused  
7 Resources Trust Company to mail via United Parcel Service two checks in the amounts of  
8 \$319,000 and \$100,000 from Denver Colorado to Novato, California to invest in the DFS Trust I  
9 investment. I agree I am responsible for a loss to DFS Trust investors in the approximate amount  
10 of \$31,465,479, and that this loss may be included as relevant conduct.  
11  
12

13 . In addition, I also engaged in monetary transactions in violation of 18 U.S.C. § 1957.  
14 Specifically, on or about April 3, 2000, I withdrew \$150,000 from the DFS Trust I account with  
15 Bank of America, for the purpose of funding a redemption request from an investor. Bank of  
16 America is a commercial bank and a federally insured financial institution. These funds were  
17 derived from the proceeds of mail fraud in that on or about March 30, 2000 Resources Trust  
18 Company mailed via United Parcel Service two checks in the amounts of \$319,000 and \$100,000  
19 from Denver Colorado to Novato, California. I knew that this withdrawal involved proceeds of  
20 mail fraud at the time of the withdrawal. I know that Bank of America engages in interstate  
21 commerce. In addition, on or about April 3, 2000, I also withdrew \$100,000 from the DFS Trust  
22 I account with Bank of America for the purpose of funding a redemption request from a second  
23 investor. This \$100,000 withdrawal may be considered as relevant conduct. I agree that there is  
24 a factual basis for my pleas.  
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1           3.       I agree to give up all rights that I would have if I chose to proceed to trial,  
2 including the rights to a jury trial with the assistance of an attorney; to confront and cross-  
3 examine government witnesses; to remain silent or testify; to move to suppress evidence or raise  
4 any other Fourth or Fifth Amendment claims; to any further discovery from the government; and  
5 to pursue any affirmative defenses and present evidence.  
6

7           4.       I agree to give up my right to appeal my convictions, the judgment, and orders of  
8 the Court. I also agree to give up any right I may have to appeal my sentence, except that I  
9 reserve my right to appeal a sentence which includes a term of imprisonment greater than 46  
10 months. This limited reservation of my right to appeal does not apply if I fail to meet the  
11 requirements of U.S.C.G. §3E1.1 for acceptance of responsibility, as determined by the Court.  
12

13           5.       I agree not to file any collateral attack on my convictions or sentence, including a  
14 petition under 28 U.S.C. §2255, at any time in the future after I am sentenced, except for a claim  
15 that my constitutional right to the effective assistance of counsel was violated.  
16

17           6.       I agree not to ask the Court to withdraw my guilty pleas at any time after they are  
18 entered.  
19

20           7.       I agree that the Court should use the 2000 Sentencing Guidelines and that my  
21 sentence should be calculated as follows, and that I will not ask for any other adjustments to or  
22 reductions of the offense level or for a downward departure of any kind:

23 Count One: Mail Fraud in violation of 18 U.S.C. § 1341

24	a.	Base Offense Level, U.S.S.G. § 2F1.1: (2000 Guidelines)	6
25			
26	b.	Amount of loss: (U.S.S.G. § 2F1.1(b)(1)(I) – more than 27 \$20,000,000 but not more than \$40,000,000)	+ 16
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- c. More than Minimal Planning: + 2  
(U.S.S.G. § 2F1.1(b)(2))
- d. Acceptance of responsibility: - 3  
(If I meet the requirements of  
U.S.S.G. § 3E1.1)
- e. Adjusted offense level: 21

Count Two: Engaging in Monetary Transactions in violation of 18 U.S.C. § 1957

- a. Base Offense Level, U.S.S.G. § 2S1.2: 17  
(2000 Guidelines)
- b. Knowledge that Funds were Proceeds of  
Specified Unlawful Activity: + 2  
(U.S.S.G. § 2S1.2(b)(1)(B))
- c. Value of Funds exceeded \$200,000: + 2  
(U.S.S.G. § 2S1.1(b)(2))
- d. Acceptance of responsibility: - 3  
(If I meet the requirements of  
U.S.S.G. § 3E1.1)
- e. Adjusted offense level: 18

I agree that the government is free to argue that the two counts which I am pleading guilty to should not be grouped, and that I am free to argue that these two counts should be grouped. I agree that, regardless of any other provision in this agreement, the government may and will provide to the Court and the Probation Office all information relevant to the charged offenses or the sentencing decision. I also agree that the Court is not bound by the Sentencing Guidelines calculations above, the Court may conclude that a higher guideline range applies to me, and, if it does, I will not be entitled, nor will I ask, to withdraw my guilty pleas.

8. In return for the government’s promises set out below, I agree to pay restitution

1 for all the losses caused by all the schemes or offenses with which I was charged in this case, and  
2 I agree that the amount of restitution will not be limited to the loss attributable to the counts to  
3 which I am pleading guilty, pursuant to 18 U.S.C. § 3663(a)(3). I agree that I will make a good  
4 faith effort to pay any fine, forfeiture or restitution I am ordered to pay. Before or after  
5 sentencing, I will, upon request of the Court, the government, or the U.S. Probation Office,  
6 provide accurate and complete financial information, submit sworn statements and give  
7 depositions under oath concerning my assets and my ability to pay, surrender assets I obtained as  
8 a result of my crimes, and release funds and property under my control in order to pay any fine,  
9 forfeiture, or restitution. I agree to pay the special assessment at the time of sentencing.

12 9. I agree not to commit or attempt to commit any crimes before sentence is imposed  
13 or before I surrender to serve my sentence. I also agree not to violate the terms of my pretrial  
14 release (if any); intentionally provide false information to the Court, the Probation Office,  
15 Pretrial Services, or the government; or fail to comply with any of the other promises I have  
16 made in this Agreement. I agree that, if I fail to comply with any promises I have made in this  
17 Agreement, then the government will be released from all of its promises in this agreement,  
18 including those set forth in paragraphs 12 through 14 below, but I will not be released from my  
19 guilty pleas.

22 10. I agree that this Agreement contains all of the promises and agreements between  
23 the government and me, and I will not claim otherwise in the future.

24 11. I agree that this Agreement binds the U.S. Attorney's Office for the Northern  
25 District of California only, and does not bind any other federal, state, or local agency.

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The Government's Promises

12. The government agrees to move to dismiss any open charges pending against the defendant in the captioned indictment at the time of sentencing.

13. The government agrees not to file or seek any additional charges against the defendant that could be filed as a result of the investigation that led to the captioned indictment.

14. The government agrees to recommend the Guidelines calculations set out above.

The Defendant's Affirmations

15. I confirm that I have had adequate time to discuss this case, the evidence, and this Agreement with my attorney, and that he has provided me with all the legal advice that I requested.

16. I confirm that while I considered signing this Agreement, and at the time I signed it, I was not under the influence of any alcohol, drug, or medicine.

17. I confirm that my decision to enter my guilty pleas is made knowing the charges that have been brought against me, any possible defenses, and the benefits and possible

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1 detriments of proceeding to trial. I also confirm that my decision to plead guilty is made  
2 voluntarily, and no one coerced or threatened me to enter into this agreement.  
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5 Dated: \_\_\_\_\_

\_\_\_\_\_  
ROBERT E. VENER  
Defendant

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KEVIN V. RYAN  
United States Attorney

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11 Dated: \_\_\_\_\_

\_\_\_\_\_  
LAWRENCE J. LEIGH  
CHRISTINA HUA  
Assistant United States Attorneys

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15 I have fully explained to my client all the rights that a criminal defendant has and all the  
16 terms of this Agreement. In my opinion, my client understands all the terms of this Agreement  
17 and all the rights he is giving up by pleading guilty, and, based on the information now known to  
18 me, his decision to plead guilty is knowing and voluntary.  
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21 Dated: \_\_\_\_\_

\_\_\_\_\_  
DORON WEINBERG  
NINA WILDER  
Attorneys for Defendant

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